

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "PUBLIC PROPERTY," ARTICLE IV, ENTITLED "USES IN PUBLIC RIGHTS-OF-WAY", DIVISION 5, ENTITLED "SIDEWALK CAFES", BY CREATING SECTION 82-391, ENTITLED "VOLUNTARY CITY SUBSIDY ADVANCE PROGRAM FOR SIDEWALK CAFES AND PARKLETS," IN ORDER TO CREATE A VOLUNTARY CITY SIDEWALK CAFE AND PARKLET SUBSIDY PROGRAM FOR THOSE OPERATORS WHO ELECT TO PARTICIPATE; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City has determined that sidewalk cafes and parklets, operated in a manner that advance the interests of the City, as defined by the City (in its sole discretion), are desirable and provide positive dining options for the enjoyment of public outdoor areas, thereby enhancing the quality of life for residents and the quality of the tourist experience for the City's visitors, and is a valid public purpose; and

WHEREAS, sidewalk cafes and parklets can, if operated at a high standard, provide a unique environment and ambiance, and an aesthetically pleasing experience for relaxation and food and/or beverage consumption that enhances the sophisticated and mature brand that the City has determined to promote; and

WHEREAS, the City is not required to allow private business operations, including sidewalk cafes and parklets, on the City's sidewalks or other rights-of-way, and the City retains at all times its right to discontinue issuing sidewalk cafe and parklet permits (in whole or in part) if their operation no longer advances the City's interests, as determined by the City in its sole discretion; and

WHEREAS, a sidewalk cafe or parklet permit issued by the City offers the use of the City's valuable public property solely in its proprietary capacity as the owner of the interest in the land on which sidewalk cafes and parklets shall be allowed; and

WHEREAS, it is desirable, however, that sidewalk cafes and parklets be operated and maintained in accordance with the highest levels of service and quality, befitting the status of a recognized world class, international resort destination like Miami Beach; and

WHEREAS, the City has determined that allowing privately owned sidewalk cafes and parklets that advance the proprietary interests of the City in improving the quality of life for residents and advancing the tourism-related goals of enhancing the experience for visitors, as defined by the City (in its sole discretion), is a valuable public purpose, so providing further incentive for sidewalk cafes and parklets that are operated strictly in a manner that advances the interests of the City, as defined by the City (in its sole discretion), is an efficacious use of public resources. To that end, sidewalk cafes and parklets that meet the unique requirements for eligibility and execute (and comply with) the City's sidewalk cafe and parklet voluntary subsidy program participation agreement should now be further subsidized by the City by providing a payment from the City to participants; and

WHEREAS, pursuant to this declaration of necessity and intent, the following guidelines are enacted for program applicants and participants, compliance with which shall be stipulated

by an executed sidewalk cafe and parklet voluntary City subsidy program participation agreement, drafted by the City at its sole discretion, between the City and each program participant; and

WHEREAS, the program guidelines apply only to conduct on City property, are bargained for by the City in its propriety interest, and are not intended to regulate lawful restaurant business activity that is not conducted on City property; and

WHEREAS, paying the City subsidy to private businesses that operate their sidewalk cafes and/or parklets in a manner that does not advance the City's interests, as defined by the City (in its sole discretion), is not desirable, is not appreciated by its residents and its visitors, and is not a valid public purpose; and

WHEREAS, the guidelines set forth here will advance the sophisticated and mature brand that the City has determined to promote by permitting qualified sidewalk cafes and parklets to participate in the program.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. That the section of the City's Sidewalk Cafe Ordinance, as such Ordinance is codified in the City Code, be adopted as follows and as hereinafter set forth below:

**CHAPTER 82
PUBLIC PROPERTY**

* * *

ARTICLE IV. USES IN PUBLIC RIGHTS-OF-WAY

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DIVISION 5. SIDEWALK CAFES

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Subdivision II. – Sidewalk Cafe and Parklet Program Permit

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Sec. 82-391. – Voluntary city subsidy advance program for sidewalk cafes and parklets.

The city hereby creates the voluntary city subsidy advance program for sidewalk cafes and parklets ("the program"), governed and administered as set forth below.

(a) Declaration of necessity and intent.

- (1) The city has determined that allowing privately owned sidewalk cafes and parklets, operated in a manner that advance the interests of the city, as defined by the city (in its sole discretion), are desirable and provide positive dining options for the enjoyment**

of public outdoor areas, thereby enhancing the quality of life for residents and the quality of the tourist experience for the city's visitors, and is a valid public purpose;

- (2) sidewalk cafes and parklets can, if operated at a high standard, provide a unique environment and ambiance, and an aesthetically pleasing experience for relaxation and food and/or beverage consumption that enhances the sophisticated and mature brand that the city has determined to promote;
- (3) the city is not required to allow private business operations, including sidewalk cafes and parklets, on the city's sidewalks or other rights-of-way, and the city retains at all times its right to discontinue issuing sidewalk cafe and parklet permits (in whole or in part) if their operation no longer advances the city's interests, as determined by the city in its sole discretion;
- (4) a sidewalk cafe or parklet permit issued by the city offers the use of the city's valuable public property solely in its proprietary capacity as the owner of the interest in the land on which sidewalk cafes and parklets shall be allowed;
- (5) it is desirable, however, that sidewalk cafes and parklets be operated and maintained in accordance with the highest levels of service and quality, befitting the status of a recognized world class, international resort destination like Miami Beach;
- (6) the city retains the authority and ability, at all times, to incentivize and fund activities that advance its interests (as defined in its sole discretion) and that funding recipients agree voluntarily to undertake;
- (7) the city has determined that allowing privately owned sidewalk cafes and parklets that advance the proprietary interests of the city in improving the quality of life for residents and advancing the tourism-related goals of enhancing the experience for visitors, as defined by the city (in its sole discretion), is a valuable public purpose, so providing further incentive for sidewalk cafes and parklets that are operated strictly in a manner that advances the interests of the city, as defined by the city (in its sole discretion), is an efficacious use of public resources. To that end, sidewalk cafes and parklets that meet the unique requirements for eligibility and execute (and comply with) the city's sidewalk cafe and parklet voluntary subsidy program participation agreement should now be further subsidized by the city by providing a payment from the city to participants;
- (8) pursuant to this declaration of necessity and intent, program guidelines are enacted for program applicants and participants, compliance with which shall be stipulated by an executed sidewalk cafe and parklet voluntary city subsidy program participation application and agreement, the terms of which shall be set forth by the city at its sole discretion, between the city and each program participant;
- (9) the program guidelines apply only to conduct on city property, are bargained for by the city in its proprietary capacity, and are not intended to regulate lawful restaurant business activity that is not conducted on city property; and
- (10) paying the city subsidy to private businesses that operate their sidewalk cafes and parklets in a manner that does not advance the city's interests, as defined by the city (in its sole discretion), is not desirable, is not appreciated by its residents and its visitors, and is not a valid public purpose; and

- (11) the guidelines set forth for program participants will advance the sophisticated and mature brand that the city has determined to promote by permitting qualified sidewalk cafes and parklets, if they so choose, to participate in the program.

(b) Program Participation Standards.

- (1) Prior to issuance of an annual sidewalk cafe and/or parklet permit, each eligible sidewalk cafe and/or parklet operator shall be offered the opportunity to participate in the program and receive, at the operator's election, an annual voluntary city subsidy advance payment from the city equal to \$125 per square foot of permitted sidewalk cafe and/or parklet space to each sidewalk café and/or parklet operator responsible for paying the standard per square foot permit fee.
- (2) Prior to each sidewalk cafe permit year, each eligible sidewalk cafe and/or parklet operator who elects to voluntarily request the city subsidy payment shall annually complete a program application and agreement setting forth the sidewalk cafe and/or parklet operator's election to receive the city subsidy payment and its agreement to comply with the program guidelines, which shall be applicable to both sidewalk cafes and parklets as defined in section 82-390.
- (3) The program application, agreement, and accompanying guidelines shall be drafted (and subsequently amended, if necessary) by the city manager, and approved by resolution of the city commission. The agreement and guidelines shall govern each permit year and shall not be amended during the permit year, except that ordinances and resolutions generally applicable to sidewalk cafes and parklets may be amended, created, or repealed at any time.
- (4) The sidewalk cafe code of conduct as set forth in section 82-389 shall be incorporated by reference into each program application and agreement, the violation of which shall additionally constitute a breach of the program agreement.
- (5) If the operator's executed application and agreement are approved by the city manager, the program subsidy payment shall be advanced by the city to the program participant by means of an invoice credit on the current year sidewalk cafe and/or parklet permit invoice. The advanced funds shall remain the city's property at all times until the end of the permit year; at which time it will become the property of the program participant if the program agreement was not terminated by the city manager prior to the end of the permit year.
- (6) During the permit year, the city manager or designee shall notify a participant of any breach of the program guidelines via hand-delivery to a manager of the sidewalk café and/or parklet. The city manager shall then allow a one-time cure period of twenty-four (24) hours. If, at the city manager's sole discretion, the breach is cured within that period, continued participation may be allowed. If, however, the program participant fails to cure the breach or again breaches a program guideline during the permit year, no further cure period must be allowed and the city manager may terminate the agreement (with hand-delivered notice to a manager), and demand the return of the city's subsidy funds advanced. If repayment of the city's funds is demanded, the advanced funds credit issued to the program participant on its annual sidewalk cafe and/or parklet permit invoice for the current year shall be reversed and the balance owed for the standard square footage sidewalk cafe and/or parklet permit fee for the permit year shall be simultaneously billed to the sidewalk cafe and/or

parklet operator. The city manager's decision to terminate a program participant's agreement shall be final and at his or her sole discretion. A terminated program participant shall pay the advanced funds to the city within ten (10) days of notice of termination. A sidewalk cafe and/or parklet operator that fails to pay the full standard fee at the applicable rate within ten days shall be deemed to have failed to timely pay the sidewalk cafe and/or parklet permit fee as of that date and enforcement may follow pursuant to this division for failing to pay the annual sidewalk cafe and/or parklet permit fee.

- (7) Each program applicant shall be initially eligible to receive the program's city funded subsidy advance payment starting with the 2022 sidewalk cafe and/or parklet permit year. A program participant whose program agreement is terminated by the city manager shall be ineligible to again participate for the next two permit years, and shall only subsequently be eligible for this city funding at the sole discretion of the city manager.
- (8) The program, its funding and payment, its guidelines, and its termination solely implicates city funds that the program applicant and/or participant voluntarily requests from the city, and the program funds remain at all time property of the city until the end of the permit year covered by each annual program participation application and agreement. At the end of each year, the City's authority to demand the return of its advance funding for the program shall end for that year. Otherwise, decisions relating to granting access to the program, governing the program, funding the program, paying program funds, demanding return of program funds, and terminating the program for a participant during the program year (or in whole before the start of the next program year) shall be made solely at the discretion of the city manager, whose decisions regarding the program shall be final.
- (9) Nothing in this section creates any right to participate in the program, right to receive city funds, right to retain advanced city funds, right to challenge or appeal any decision related to the program, or any other right (including, but not limited to, any property right, due process right, or other statutory or constitutional right) related to the program.

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Miami Beach City Code. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2021

PASSED AND ADOPTED this _____ day of _____, 2021.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

(Sponsored by Mayor Dan Gelber)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

7-21-21

Date